Court No. - 79

Case :- CRIMINAL REVISION No. - 3760 of 2023

Revisionist :- Amit Bajpai
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Sarvesh Kumar Dubey
Counsel for Opposite Party :- G.A.,Chandra Bhushan Yadav

Hon'ble Vipin Chandra Dixit,J.

Heard Sri Sarvesh Kumar Dubey, learned counsel for the revisionist, learned A.G.A. for the State and Sri Chandra Bhusan Yadav, learned counsel for the opposite party no.2.

This criminal revision has been filed by the revisionist against the judgement and order dated 14.06.2023 passed by Additional Principal Judge, Family Court, Court No.1, Kanpur Nagar in Case No.- 502 of 2020 by which the application filed on behalf of opposite party no.2 under Section 125 Cr.P.C. was allowed and revisionist was directed to pay maintenance @ Rs. 5,000/- per month from the date of application i.e. 17.03.2020.

It is submitted by learned counsel for the revisionist that opposite party no.2 has filed a false affidavit disclosing herself as a housewife whereas she is working a Physiotherapist in Jai Ram Hospital, Kanpur Nagar. The revisionist had moved an application under Section 340 Cr.P.C. on 31.03.2022 with the prayer to initiate appropriate proceedings against the opposite party no.2 for giving false affidavit before the Court. The application was registered as Misc. Application No.- 473 of 2022. This fact has been brought before the Family Court where the application under Section 125 Cr.P.C. was pending, which is evident from the order sheet dated 31.03.2022. It is further submitted by learned counsel for the revisionist that the learned Family Court without deciding the application filed by the revisionist under Section 340 Cr.P.C. has proceeded with the case and decided the application filed by opposite party no.2 under Section 125 Cr.P.C. and maintenance has been awarded on relying the false affidavit filed by opposite party no.2. He has placed reliance on the judgement dated 22.02.2008 passed by this Court in Criminal Revision No.- 6203 of 2006. Relevant paragraph is reproduced hereinunder:-

> *"In my opinion, it cannot be a valid consideration for deciding the controversy between the parties as to whether the procedure in initiating the proceedings under Section 340, Cr.P.C. adopted by the trial court was correct or wrong. The only consideration for testing the propriety of the judgment under Section 125, Cr.P.C. is as to whether the decision on the application under Section 340, Cr.P.C. can be a valid consideration or not for deciding the application under Section 125, Cr.P.C. and in that regard it can safely be said that once findings recorded on the application*

under Section 340, Cr.P.C. have not been set aside by any competent court of law, hence, these findings are binding upon the parties and in view of these findings this can very well be said that the evidence on the basis of which the wife got judgment in the proceedings under Section 125, Cr.P.C. cannot be said to be a good judgment as this judgment is based on that evidence which has been held to be forged by that very court which had decided the proceedings under Section 125, Cr.P.C."

Learned counsel for the revisionist further placed reliance on the judgement dated 09.01.2003 passed by Lucknow Bench of this Court in Writ Petition No.- (M/S) of 2002. Relevant paragraph is reproduced hereinunder:-

"In my view, if any application is moved in the pending case bringing to the notice of the court that any false evidence knowing well has been filed or fabricated in such proceedings, the court should dispose of the said application first before proceeding any further or before recording of further evidence.

In the circumstances, I dispose of the present application and direct the Additional Principal Judge Family Court to dispose of the application so moved by the petitioner under Section 340, 344 Cr.P.C. before proceeding further in accordance with law."

Learned counsel for the opposite party no.2 and learned A.G.A. for the State do not dispute the aforesaid legal position.

In view of above the criminal revision is ***allowed***. The judgement and order dated 14.06.2023 passed by Additional Principal Judge, Family Court, Court No.-1, Kanpur Nagar in Case No.- 502 of 2020 is set aside.

Learned Principal Judge, Family Court, Court No.-1/court concerned is directed to decide the application filed by revisionist under Section 340 Cr.P.C. which was registered as Misc. Application No. 473 of 2022 within a period of three months from the date of production of certified copy of this order, and thereafter the application filed by opposite party no.2 under Section 125 Cr.P.C. expeditiously, without granting undue adjournments to either of the parties unless there is any legal impediments.

Order Date :- 15.12.2023
Virendra